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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,570	02/24/2004	Rodney O. Nuckles	HO-P02734US1	9872

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EXAMINER

DONOVAN, MAUREEN C

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 07/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/785,570

Applicant(s)

NUCKLES ET AL.

Examiner

Maureen C Donovan

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Oath/Declaration***

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because: It does not state whether the inventor is a sole or joint inventor of the invention claimed.

### ***Claim Objections***

1. Claim 22 is objected to because of the following informalities: The word "a" appears to be out of place in front of the word "ratio". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "less than" in claim 11, line 1 renders the range of gelling agent claimed indefinite. It is not clear whether the range includes all concentrations that are "less than" 2%, if the concentration of 2% is claimed as a limitation and whether concentrations that are less than 0.05% are claimed as they are also less than 2%. The range is not defined by the claim, the specification does not

provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Therefore the concentration range of gelling agent is rendered indefinite by the use of the term "less than".

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1,2,11,13,14,15,17,19,20,21 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Shaw, US patent number 4 196 219.

Shaw discloses a process for preparing gelled food products comprising the steps of: preparing food materials and ingredients to form a food product (see Column 2, lines 47-54); preparing a gelling agent to form a gelling solution (see Column 2, lines 63-68; dipping the food product in the gelling solution (see Column 3, lines 1-5); and cooling the food product and gelling solution (see Column 3, lines 18-19), wherein the gelling agent is carrageenan (see Column 1, lines 66-67). Shaw discloses that the gelling agent is present between 0.025% to 0.5% (which is less than 2%) by weight of the food product (see Column 5, lines 59-62). Note that Shaw discloses using a gelling agent in the concentration range as claimed by applicant; therefore one of ordinary skill in the art would expect that by using a gelling agent at the concentration as disclosed by

Shaw would inherently inhibit the gelled food product from re-gelling when mixed with other food products prior to consumption. Shaw discloses that the food materials are cooked meat, cooked poultry, cooked fish, and wherein the food products are non-shelf stable food products requiring refrigeration or freezing after forming (see Column 5, lines 43-49). Shaw discloses placing the food product into a container prior to the cooling step (see Column 3, lines 4-6) and then removing the gelled food product from the container after the cooling step (see Column 3, lines 24-29). Note that the office interprets the reference to include the step of removing the product from the container when the meat is served to the food technologists. Shaw discloses that the demolded gelled food product forms a portion-controlled food product (see Column 2, lines 47-49) and therefore inherently the portions would provide a control system for measured amounts of food components selected from the group consisting of carbohydrates, fats, salt, protein, fiber, calcium. Shaw further discloses including the step of heating the gelled food product during final preparation of the product for consumption (see Column 3, line 25), at a selected temperature by means of a heating source and then the food product is removed from the heating source and served (see Column 3, lines 24-29). Note that Shaw discloses the gelled food product as disclosed by applicant, and discloses cooking the food product at a temperature between 140°F and 175°F, therefore one of ordinary skill in the art would expect that during the heating step the gelling agent would destruct.

2. Claims 1,16,18,23 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Bienvenu, US patent number 5 858 426.

Bienvenu discloses a process for preparing gelled food products comprising the steps of: preparing food materials and ingredients to form a food product; preparing a gelling agent to form a gelling solution; adding the gelling solution to the food product; and cooling the food product and gelling solution wherein a gelled food product is formed (see Column3, lines 47-57). Bienvenu discloses that the food products is sauce (see Column 2, lines 16-17). Bienvenu discloses further the step of heating the food product for consumption, wherein during the heating step the gelling agent will melt at a temperature range of about 90 to 130°F (see Column 1, lines 56-58). Bienvenu also discloses a method of preparing a gelled food product, comprising the steps of heating the gelled food product to a selected temperature by means of a heating source; removing the food product from the heating source and serving the food product wherein other food products can be added to the gelled food product after the first heating step and the gelled food product and the other food product can be heated together by means of a heating source for a selected period of time to form a combined food product (see Column 2, lines 12-18).

3. Claims 1,9,10 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Earle, US patent number 3 395 024 as evidenced by Leblang, online article publication.

Earle discloses a process for preparing gelled food products comprising the steps of: preparing food materials and ingredients to form a food product; preparing a gelling agent to form a gelling solution; dipping the food product in the gelling solution; and cooling the food product and gelling solution, wherein a gelled food product is formed (see Column 6 and Column 7, Example 1). Earle discloses further adding a packeted enzyme to the gelling solution during preparation, wherein the packeted enzyme includes papin wherein releasing of the packeted enzyme during final preparation of the food product inhibits the gelled food product from re-gelling after final preparation, and before or during consumption of the food product (see Column 8, lines 70-75 and Column 9, lines 42-46). Note that papin is the vegetable enzyme of the papaya contained in Aldolph's Instant meat Tenderizer as evidenced by Leblang (see paragraph 1, lines 2-3). Earle also discloses that the gelling solution further includes heat sensitive colorants (see Column 5, lines 34-43).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

1. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaw as applied to claims 1,2,7,8,11,13,14,15,17,20,21 and 23 above and further in view of Tye, US patent number 5 308 636.

Shaw discloses all the features of the instantly claimed invention except for a weight percent of gelling agent to add to the food product that is greater than 0.5%.

Tye teaches that a gelling agent is added to the food product in a range of 1.0-49% (see Column 8, Example 11 and Column 6, Example 5). Note that the semolina flour composing 70% starch that is added at 70% would yield a starch concentration of 49%. Tye also teaches that the gelling agent is formed from starches and that the starches are added to the food product in a range of 1.0-49% by weight (see Column 8, Example 11 and Column 6, Example 5). Tye further teaches that a gelling agent is formed from starches and other gelling compounds that are added to a food product in a range of 1.0-49% by weight of starches and 0.1 to 5% by weight of the other gelling compounds (see Column 3, lines 52-58).

Incorporating the weight ranges as taught by Tye into the invention as disclosed by Shaw would have been obvious to one of ordinary skill in the art at the time of the invention since both are directed to gelling solutions for coating food products and since the weight ranges as taught by Tye would enhance the gel strength and stability at elevated temperatures (see Tye, Column 1, lines 29-34).



2. Claims 6 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaw as applied to claims 1,2,7,8,11,13,14,15,17,20,21 and 23 above, and further in view of Bienvenu and Mattson, US patent number 5 077 066.

Shaw discloses all the features of the instantly claimed invention except for using a gelling agent comprising 2% gelatin with the carageenan gelling agent, and the ratio of sauce food product to food product in the range of 5% to 100% sauce.

Bienvenu teaches the use of a gelling solution containing 2% gelatin (see Column 2, line 65 and Column 4, claim 5, line 65) and a sauce to food product ratio of 100% (see Column 2, line 14).

Mattson teaches a frozen food product wherein the proportion of food product to the sauce concentrate in the product is in the range from 5 to 82% (see Column 6, lines 24-25 and Column 11, Example 10, line 37).

Incorporating the use of gelatin at a 2% by weight concentration as taught by Bienvenu into the gelling solution as disclosed by Shaw would have been obvious to one of ordinary skill in the art at the time of the invention since both are directed to gelling solutions for coating food products and since the gelatin would allow the gel coating to be solid and also melt at temperatures greater than 75°F (see Bienvenu, Column 6, lines 4-13).

Using a sauce ratio from 5-100% as taught by Bienvenu and Mattson in the invention of Shaw would have been obvious to one of ordinary skill in the art at the time of the invention to use a ratio in the range taught by Mattson in order to "assure good

mouth feel" of the food product (see Column 2, lines 56- 58) and optionally to obtain a product that was only sauce (see Bienvenu, Column 2, line 14).

3. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaw as applied to claims 1,2,7,8,11,13,14,15,17,20,21 and 23 above, and further in view of Hansson, US patent number 5 314 705.

Shaw discloses all the features of the instantly claimed invention, including heating the gelled food product for more than 10 minutes (see Column 3, lines 24-29). Shaw does not disclose that the heating step inhibits the gelled food product from re-gelling.

Hansson teaches that the step of heating the gelled food product during final preparation breaks the gelling agent down (see Column 1, lines 29-33) which inherently would mean the gelled food product could not re-gel after final preparation, and before or during consumption of the food product.


Incorporating the teachings of Hansson into the invention as disclosed by Shaw would have been obvious to one of ordinary skill in the art at the time of the invention since both are directed to processes for preparing a gelled food product and serving it, and since breaking down the gelling agent provides the food product with a more attractive appearance (see Hansson, Column 2, lines 61-63).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maureen C Donovan whose telephone number is (571) 272-2739. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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